

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34370/34371/34372

STATE OF IDAHO,)	2008 Unpublished Opinion No. 506
)	
Plaintiff-Respondent,)	Filed: June 10, 2008
)	
v.)	Stephen W. Kenyon, Clerk
)	
JOE WILLY HERNANDEZ,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. G. Richard Bevan, District Judge.

Orders relinquishing jurisdiction, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

PER CURIAM

In these consolidated cases, Joe Willy Hernandez was convicted of manufacturing a controlled substance, Idaho Code §§ 37-2732(a)(1)(B), -2705(d)(27); riot, I.C. §§ 18-6401, -640; and grand theft by possession of stolen property, I.C. §§ 18-2403(4), -2407. The district court imposed concurrent unified sentences of five years determinate for manufacturing marijuana, ten years with five years determinate for riot, and ten years with five years determinate for grand theft, and retained jurisdiction in all three cases. At the conclusion of the retained jurisdiction program, the court relinquished jurisdiction and ordered execution of Hernandez's sentences. Hernandez appeals the court's decision to relinquish jurisdiction.

The decision as to whether to place a defendant on probation or, instead, to relinquish jurisdiction is committed to the discretion of the sentencing court. *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). It follows that a decision to relinquish jurisdiction will not be disturbed on appeal except for an abuse of discretion. *State v. Chapman*,

120 Idaho 466, 472, 816 P.2d 1023, 1029 (Ct. App. 1991). The standards governing the trial court's decision and our review were explained in *State v. Merwin*, 131 Idaho 642, 962 P.2d 1026 (1998):

“Refusal to retain jurisdiction will not be deemed a ‘clear abuse of discretion’ if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under [the statute].” While a Review Committee report may influence a court’s decision to retain jurisdiction, “it is purely advisory and is in no way binding upon the court.” Idaho Code § 19-2521 sets out the criteria a court must consider when deciding whether to grant probation or impose imprisonment. . . . “A decision to deny probation will not be held to represent an abuse of discretion if the decision is consistent with [the § 19-2521] standards.”

Id. at 648-49, 962 P.2d at 1032-33 (citations omitted). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate. We hold that the district court did not abuse its discretion, and we therefore affirm the orders relinquishing jurisdiction.